IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3197/2007

Suresh s/o Wasudeorao Bonde

...Versus...

Atul s/o Narayanrao Borkar

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's orders**

(Shri S.D. Khati, Adv. for petitioner)

CORAM :- A.B. Chaudhari, J.
DATED :- 26.10.2007

The petitioner who is the original plaintiff has challenged order below Exh.45 made by the Trial Court, rejecting application (Exh.45) for recalling the plaintiff for re-examination. Application (Exh.45) was filed admittedly after the petitioner closed his case by filing the pursis to that effect and the defendant's evidence is also recorded. The suit was filed for recovery of money allegedly given by the petitioner to the defendant and on the basis of promisory-note allegedly signed by the respondent. The signature on the stamp paper is seriously disputed by the respondent/defendant and the document was sent to the handwriting expert, who has opined that the said signature does not tally with the signature on the document.

The petitioner made an application (Exh. 46) in the Trial Court seeking therein that he has filed rent receipts singed by the respondent-landlord in Civil Suit No.544/2002 which contained the signature of respondent-landlord and, therefore, he wanted to bring those rent receipts by recalling the petitioner for re-examination. The application vaguely states that the petitioner received the said rent receipts and were filed in the said Civil Suit No.544/2002. It is difficult to accept the submission that the petitioner did not remember that he was having the rent receipts with signatures of the defendant with him. The petitioner ought to have filed those rent receipts no sooner respondent/defendant denied the execution of stamp paper or his signature.

In view of the fact that appropriate reason did not exist in the application (Exh.45) and apart from that the petitioner appears to have been not diligent in filing the rent receipts if at all he wanted to rely on the same at appropriate time. The Trial Court has, therefore, rightly exercised its discretion in refusing to entertain the application (Exh.45), since the application was moved at a very late stage.

I, therefore, do not propose to interfere with the impugned order under Article 227 of the

Constitution of India. The writ petition is, therefore, dismissed. No order as to costs.

JUDGE

ssw